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19 PETER STALEY, et al.,  
20  
21 Plaintiffs,  
22  
23 v.  
24 GILEAD SCIENCES, INC., et al.,  
25  
26 Defendants.

Case No. 3:19-cv-02573-EMC  
**FIRST AMENDED  
CONSOLIDATED CLASS  
ACTION COMPLAINT**  
**DEMAND FOR JURY TRIAL**

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1 Plaintiffs, on behalf of themselves and all others similarly situated (the “Class,” as defined  
2 below), on personal knowledge with respect to facts pertaining to them and upon information and belief  
3 as to other matters, bring this class action complaint against Defendants Gilead Sciences, Inc., Gilead  
4 Holdings, LLC, Gilead Sciences, LLC, Gilead Sciences Ireland UC (together, “Gilead”), Bristol-Myers  
5 Squibb Company, E. R. Squibb & Sons, L.L.C. (together, “BMS”), Janssen R&D Ireland, Janssen  
6 Products LP, and Johnson & Johnson (together, “Janssen”) (collectively, “Defendants”) for damages,  
7 injunctive relief, and other relief pursuant to the federal antitrust laws and state antitrust and consumer  
8 protection laws.

## 9 10 I. INTRODUCTION

11 1. Gilead and its coconspirators have engaged in a long-running scheme to restrain  
12 competition with respect to some of the most important drugs used to treat Human Immunodeficiency  
13 Virus (“HIV”) infection—a disease which, if left untreated, destroys the immune system, leading to  
14 Acquired Immunodeficiency Syndrome (“AIDS”) and eventual death. Through an array of  
15 anticompetitive practices—including horizontal agreements constituting per se violations of the antitrust  
16 laws—Gilead has acquired and maintained a monopoly in the market for drugs that comprise the modern  
17 HIV treatment regimen known as “combination antiretroviral therapy” (“cART”). The scheme has  
18 enabled Gilead and its coconspirators to unlawfully extend patent protection for their drugs, impair entry  
19 by would-be generic competitors, and charge exorbitant, supracompetitive prices for the drugs that  
20 people living with HIV need to survive.

21 2. Gilead dominates the class of drugs that target HIV known as “antiretrovirals,” which are  
22 essential to effective HIV therapy. Modern antiretroviral drug regimens comprise a combination or  
23 “cocktail” of drugs, most often consisting of two nucleotide/nucleoside analogue reverse transcriptase  
24 inhibitors (“NRTIs”) taken with at least one antiretroviral drug of another class, such as an integrase  
25 inhibitor, commonly referred to as “third agents.” These antiretroviral cocktails are known as cART  
26 regimens. During most of the relevant time, Gilead was the exclusive maker (and is still the dominant  
27 maker) of one of the principal NRTIs used in cART regimens: Tenofovir. By controlling the market for  
28 Tenofovir, and through its collusive agreements with its coconspirators, Gilead now dominates the

1 market for cART. Today more than 80% of patients starting an HIV regimen in the United States, and  
2 more than 80% of continuing patients, take one or more of Gilead's products every day. Gilead's sales of  
3 these products in the United States alone are more than \$13 billion annually.

4 3. Gilead maintains a stranglehold on the cART market even though Tenofovir was  
5 discovered more than 30 years ago by researchers in the Czech Republic. In 2001, Gilead began  
6 marketing its patented formulation of the compound known as tenofovir disoproxil ("TDF"), quickly  
7 reaching sales in the hundreds of millions of dollars. Gilead expected that generic manufacturers would  
8 challenge the validity of its Tenofovir patents and potentially enter the market as early as 2009. So, in  
9 order to head off the threat of generic competition, Gilead and each of its coconspirators, BMS and  
10 Janssen, entered into a series of collusive and illegal horizontal agreements providing that each  
11 coconspirator would not compete against Gilead's Tenofovir, and would effectively block other  
12 companies from competing against Tenofovir, *even after Gilead's Tenofovir patents expired*.

13 4. Gilead and its coconspirators coformulated TDF with the coconspirators' third agents into  
14 single pills known as fixed-dose-combination drugs ("FDCs"). Each of the joint development agreements  
15 prevented the coconspirator from creating or marketing a competing version of the FDC formulated with  
16 generic versions of Gilead's TDF even after Gilead's patents expired (hereinafter a "No-Generics  
17 Restraint"). This gave Gilead an enormous financial incentive to move prescriptions from its standalone  
18 version of TDF to the FDCs, which would be insulated from generic competition even after TDF's  
19 patents expired. And it meant that Gilead's most likely competitors—the companies that could formulate  
20 FDCs with generic alternatives to TDF—had instead promised not to compete with Gilead. In exchange,  
21 the No-Generics Restraints and joint development agreements enabled Gilead and the coconspirator to  
22 share the artificially inflated profits from each other's sales.

23 5. As part of the unlawful scheme's quid pro quo, Gilead also agreed to shield BMS and  
24 Janssen's HIV drugs from imminent generic competition by allowing them to coformulate FDCs that  
25 combined their vulnerable products with a Gilead booster drug, Cobicistat, which enjoyed much longer  
26 patent protection. Just as BMS and Janssen agreed not to market a competing FDC even after Gilead's  
27 patents expired, Gilead returned the favor by agreeing not to market a competing FDC after the BMS and  
28 Janssen patents expired.

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